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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR    | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-------------------------|---------------------|------------------|
| 09/698,149      | 10/30/2000  | Dominic Wai-Kwing Yeung | APV 30271CIP        | 6595             |

7590

06/28/2002

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Washington, DC 20036

EXAMINER

ASINOVSKY, OLGA NMN

ART UNIT PAPER NUMBER

1711

DATE MAILED: 06/28/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-12

**Office Action Summary**

Application No.

09/698,149

Applicant(s)

YEUNG ET AL.

Examiner

Olga Asinovsky

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1711

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 April 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 22-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.                      6) ☐ Other:

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-19 and 22-24 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McCall U.S. Patent 5,277,899 or Li et al U.S. Patent 5,580,819.

The rejection is set forth at pages 2-5 of the office action mailed on 10/23/01, paper No. 7 and is incorporated here by references.

Applicant's arguments filed on 04/23/02 have been fully considered but they are not persuasive.

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The applicants' amend claims by incorporating a definition for a block polymer that is a "sud stabilizer" for each independent claims 1, 11 and 12. Also, each independent claims 1, 11 and 12 recite an upper limit of cationic charge density of about 5.

Applicants' argument is that McCall nor Li does not disclose applicants' claimed polymer having suds stabilizing properties and a cationic charge density of about 5 for the claimed block polymer. The applicants argue that the cationic charge density depends on the ratios of the various monomers and the pH of the composition. None of the cited references is teaching the benefit for the specific limitation of cationic charge density for obtaining suds stabilizing properties. The examiner agrees.

However, McCall discloses hair setting composition with combination of cationic conditioners, wherein the cationic group containing monomer(s) may be present in the amount of up to about 98%, more preferably up to about 20%, column 16, lines 35-36. The B monomers include applicants' claimed cationic group-containing unit which is dimethyaminoethyl methacrylate, column 16, line 64. The combination of hydroxyethyl (meth)acrylate and (meth)acrylic acid may be present from 5% to about 98%, column 17, line 54.

In Li's invention the amount of the ingredients are varied for the purpose for obtaining coating properties. Li discloses a coating composition having the applicants' claimed formulation. The cationic charge density is depending on the amount of these ingredients.

The applicants' claimed "suds stabilizing" properties are also depending on the amount of the ingredients. The sud stabilizing properties and cationic charge density are inherent for the

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formulation hair setting composition by McCall and Li. Each of the cited references discloses the identical formulation for a block polymer. It is the examiner's position that it would have been prima facie obvious to select the amount of the ingredients to achieve the desired cationic charge density and suds stabilizing properties in McMall or Li's invention since each references disclose the same chemical formulation of block polymer.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga Asinovsky whose telephone number is (703) 308-0041. The examiner can normally be reached on Monday to Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on (703) 308-2462. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718 or (703) 872-9311, after final.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

O.A.

O.A.

June 19, 2002

  
James J. Seidleck  
Supervisory Patent Examiner  
Technology Center 1700